

§ 11.312

signed either by the clerk of the court or by a magistrate of the Court of Indian Offenses and which are to be served within Indian country over which the Court of Indian Offenses has jurisdiction.

(b) A subpoena shall bear the signature of the chief magistrate of the Court of Indian Offenses, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(c) A subpoena may be served at any place but any subpoena to be served outside of the Indian country over which the Court of Indian Offenses has jurisdiction shall be issued personally by a magistrate of the Court of Indian Offenses.

(d) A subpoena may be served by any law enforcement officer or other person appointed by the court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person 18 years of age or older who also resides or works there.

(e) Proof of service of the subpoena shall be filed with the clerk of the court by noting on the back of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(f) In the absence of a justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his or her arrest.

§ 11.312 Witness fees.

(a) Each fact witness answering a subpoena is entitled to a fee of not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each fact witness testifying at a hearing shall receive pay for a full day (eight hours) plus travel allowance.

(b) The Court of Indian Offenses may order any party calling a witness to

25 CFR Ch. I (4–1–16 Edition)

testify without a subpoena to compensate the witness for actual traveling and living expenses incurred in testifying.

(c) If the Court of Indian Offenses finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the court for expenditures incurred under this section, and such order may constitute a judgment upon which execution may levy.

§ 11.313 Trial procedure.

(a) The time and place of court sessions, and all other details of judicial procedure shall be set out in rules of court approved by the chief magistrate of the Court of Indian Offenses.

(b) Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the court or by the existence of inconsistent tribal rules of evidence.

§ 11.314 Jury trials.

(a) A defendant has a right, upon demand, to a jury trial in any criminal case:

(1) That is punishable by a maximum sentence of one year incarceration; or

(2) In which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought.

(b) If the prosecutor informs the court that no sentence of incarceration will be sought, the court may not impose a sentence of incarceration for the offense.

(c) A jury must consist of not less than six residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court.

(1) An eligible juror must:

(i) Be at least 18 years of age;

(ii) Not have been convicted of a felony; and

(iii) Be otherwise qualified according to standards established by the Court of Indian Offenses under its general rulemaking authority.

(2) Any party may challenge without cause a maximum of three members of the jury panel chosen under this section.

(d) The magistrate shall instruct the jury with regard to the applicable law